

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1510/88 198
T.A. No.

DATE OF DECISION 29-1-1990

Inder Singh Applicant (s)

Sh. G.D. Bhandari Advocate for the Applicant (s)
Versus
Union of India Respondent (s)

Sh. S.N. Sikka Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (J)

The Hon'ble Mr. I.K. Rasgotra, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(delivered by Hon'ble Shri I.K. Rasgotra, Member (A))

The applicant who is working as a Constable in the Railway Protection Force of Northern Railway has filed this application under Section 19 of the Administrative Tribunal Act, 1985 praying that the selection conducted by the respondents pursuant to the impugned notice dated 21-4-1989 should be set aside.

The issue whether the Tribunal has jurisdiction in the matter in view of the applicant being a member of the Armed Forces of the Union was decided vide this Tribunal order dated 7-11-1988. It was held that issue raised in the application was distinguishable from matters pertaining to a member of the Armed Forces as it relates to recruitment to a civil post and as such the application falls within the jurisdiction of the Tribunal.

contd...

2. After hearing the case, this Tribunal passed an order on 17.11.1989 directing the respondents to produce

(a) The rules regulating the conduct of limited departmental competitive examination for filling up the 20% quota of Class III posts from amongst Class IV employees who belonged to different streams and

(b) The record of the examination held with marks allocated to each candidate in the written test and viva voce.

Despite adequate time given to them the respondents have not produced these records.

3. The facts of the case are that the applicant was appointed as a Constable (Rakshak) in the Railway Protection Force in March, 2, 1983 on the Northern Railway in the pay scale of Rs.200-240/- (Rs.825-1200) under Commandant RPF, Daya Basti, Delhi and posted in Baroda House, New Delhi. He applied for and appeared in the limited departmental competitive examination conducted by the respondents on 17.1.1988 for the post of a clerk. He was declared successful in the written test on 7.4.1988. The staff working in the Grade 225-308 (825-1200) and Class IV staff working in other allied offices who had rendered two years and three years service as on 30.4.1987 were eligible to appear at the examination. The candidates were also required to be conversant in reading and writing English and Hindi. Further such of the security staff are eligible to apply who have no avenue of promotion in their own cadre. The grievance of the applicant is that some of the persons belonging to the Railway Protection Force were transferred to the Headquarter seniority unit from other seniority units and allowed to appear in the examination retaining their original Divisional seniority. It is contended that according to the rules the seniority of such transferred personnel should be from the date they joined the Headquarter Seniority Unit. The applicant has, further,

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contended that RPF Constable, Shri V. Sushilan, who joined the Headquarter office on 20-4-1987 on transfer from Delhi Division has been allowed to count his original Division seniority and has thus been placed senior to the applicant. He has, therefore, prayed that the selection conducted on the basis of seniority should be set aside and that the selection should be finalised on the basis of merit ⁱⁿ ~~the~~ Limited Departmental Competitive examination.

4. The respondents in their reply to the application have stated that the Headquarter office, its Unit at Dayabasti and Delhi Division ^{constitutes} a single seniority Unit and transfers within the same seniority unit will not affect the seniority. They have, ^{also} contended that Constable V. Sushilan was eligible to appear in the competitive examination, as he had applied for the same before the closing date of 31-5-1987. The respondents have further stated that "Original seniority cannot be ignored when transfers are ordered in the interest of administration or within the same unit". (para D of page 29 of the paperbook). It has however been admitted that seniority is not the determining factor in the departmental competitive examination and that "it is merit that counts".

5. The respondents however have not clearly indicated as to who are the persons if any, out of the ten names listed in the Annexure 5 of the application who were transferred on their own request to the headquarter unit and those who were transferred in public interest. They have also not clarified the public interest involved in transferring the Rakshaks of R.P.F. to Headquarter ^{office,} ~~conferring~~ the benefit of retention of original regional seniority.

6. We find that Rule 110 of the Railway Establishment Manual relates to promotion in higher grades to Class III from Class IV.

"Railway servants in class IV categories for whom no regular avenue of promotion exists, 25% of the vacancies in the lowest grade of Commercial Clerks, Ticket Collectors, Trains Clerks, Number Takers, Time Keepers, Fuel Checkers, Office Clerks, Accounts Clerks, Typists and Stores Clerks etc. should be earmarked for promotion subject to the following conditions:

(i) All promotions should be made on the basis of selection. There should be written tests to assess the educational attainments of candidates followed by interviews where considered necessary. The test should be correlated to the standards of proficiency that can reasonably be expected from railway servants who are generally non-matriculates. The aim of the examiners should be to assess the general suitability of the class IV railway servants offering themselves for promotion to class III posts from the point of view of their knowledge of English and their general standard of intelligence.

(1)

(2)

(3)

(4) All those who qualify in written and oral test, the qualifying percentage of marks being prescribed by the General Manager, should be arranged in the order of their seniority for promotion against the yearly vacancies available for them in Class III categories."

Since the above rules contained in the Manual have statutory force, it is obvious that the seniority plays an important role in ranking the personnel who qualified in written and oral test in the select list.

7. Having heard the learned counsel for both the parties, we have gone through the records carefully. We find that the seniority of the personnel transferred from units other than the head office seniority unit should have been

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assigned seniority below the personnel of the same rank working in the headquarter seniority unit. If any personnel were brought to the headquarter seniority unit in public interest, no material has been placed before us to substantiate the merit of such transfers. In the facts and circumstances of the case, we, therefore, order and direct that the personnel listed in the Annexure 5 of the application (page 16 of the paper book) who were transferred to the headquarter seniority unit from other seniority units should be assigned seniority below those who belong to head office seniority unit in accordance with the normal seniority rules and the select list of the candidates declared successful in the examination for the post of clerks in response to respondents letter dated 24.9.1987 should be arranged according to the seniority so assigned. There will no orders to the costs.

Subrahmanyam
(I.K. RASGOTRA)
MEMBER (A) 29/11/1990

Subrahmanyam
29/11/1990
(P.K. KARTHA)
VICE-CHAIRMAN